

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2001-324

May 30, 2001

CONSTELLATION OF NUCLEAR, LLC  
AND NINE MILE POINT NUCLEAR  
STATION, LLC APPLICATION FOR A  
FINDING OF EXEMPT WHOLESALE  
GENERATOR STATUS FOR  
CONSTELLATION NUCLEAR LLC AND  
NINE MILE POINT NUCLEAR STATION,  
LLC

ORDER

---

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

---

By this Order, we make the necessary findings to determine that New York State Electric & Gas Corporation's (NYSEG) ownership interest in the Nine Mile Point Unit No. 2 nuclear power plant is an "eligible facility" under federal law. These findings are necessary because the Commission has jurisdiction over the retail rates of Central Maine Power Company (CMP), an affiliate of NYSEG.

NYSEG, an owner of a portion of the Nine Mile Point Unit No. 2 (NMP-2) nuclear generating station, is selling its interest in the station pursuant to an auction conducted at the direction of the New York State Public Service Commission. As a result of the auction process, Constellation Nuclear, LLC was selected as the winning bidder. NYSEG entered into an asset purchase agreement with Constellation Energy Group, Inc. and Constellation Nuclear LLC on December 11, 2000. As a condition to closing the sale on NMP-2, the Federal Energy Regulatory Commission (FERC) must determine that the new owner of the nuclear facility, which will be Nine Mile Point Nuclear Station, LLC (Nine Mile LLC), will be an Exempt Wholesale Generator (EWG) under Section 32 of the Public Utility Holding Company Act (PUHCA). Because the cost of NYSEG's interest in NMP-2 was reflected in NYSEG's retail rate as of October 24, 1992 (the date of enactment Section 32 of PUHCA), FERC can find Nine Mile, LLC to be an EWG only if the purchased facility has been determined to be "an eligible facility" by the regulatory commissions having retail rate jurisdiction over the selling utility and the affiliates of the selling utility.<sup>1</sup>

NYSEG and CMP are subsidiaries of Energy East Corporation. Energy East is a registered holding company under PUHCA. CMP is therefore an affiliate of NYSEG for purposes of PUHCA. As the regulatory agency with jurisdiction over NYSEG's affiliate's

---

<sup>1</sup> See 15 U.S.C. Section 79z-5a(c).

retail rates, the Maine Commission must certify that allowing the NMP-2 facility to be eligible:

1. Will benefit consumers;
2. Is in the public interest; and
3. Does not violate Maine law.

FERC requires an EWG application to include a certification that state commissions have made the necessary findings noted in the previous sentence.

Maine's Restructuring Act (35-A M.R.S.A. § 3201-3217) separates generation from transmission and distribution of electricity, removes generators from the definition of electric utility, and requires the divestiture of generation assets by the transmission and distribution utilities. The auction conducted to sell NYSEG's interest in NMP-2 is similar to the divestiture of generation assets conducted pursuant to Maine law by CMP and other Maine utilities. Consumers will benefit by the region-wide implementation of electric restructuring consistent with the restructuring that the Maine Legislature required in Maine. Thus, the NMP-2 asset transfer is consistent with Maine's restructuring law and is not in violation of Maine law. Accordingly, we find that allowing the Nine Mile, LLC-owned Nine Mile Unit No. 2 asset to be an eligible facility:

1. Will benefit consumers;
2. Is in the public interest; and
3. Does not violate Maine law.

Dated at Augusta, Maine, this 30th day of May, 2001.

BY ORDER OF THE COMMISSION

---

Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:

Welch  
Nugent  
Diamond

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.